

NJ FEDERAL COURT EXPLAINS APPLICATION OF ROOKER-FELDMAN DOCTRINE TO FORECLOSURE PROCESS

New Jersey Federal Court Holds That *ROOKER-FELDMAN DOCTRINE DOES NOT APPLY IF STATE COURT HAS GRANTED SUMMARY JUDGMENT TO A FORECLOSING BANK STRIKING A BORROWER'S ANSWER AND DEFENSES, BUT FINAL JUDGMENT HAS NOT YET BEEN ENTERED*

In *Farah v. LaSalle Bank Nat'l Assoc.*, 2016 U.S. Dist. LEXIS 38721 (D.N.J. March 23, 2016), the court held that a bank could not deprive a federal court of subject matter jurisdiction by arguing that the *Rooker-Feldman* Doctrine applied after a New Jersey state court had granted it summary judgment but before a final judgment of foreclosure had been entered. This case is an important one in as much as it deals with the intersection of New Jersey foreclosure law and procedure and federal subject matter jurisdiction.

The plaintiff in *Farah* was a homeowner (the “Plaintiff”) who defaulted on his mortgage loan and was named a defendant in a state court foreclosure proceeding commenced by his lender (the “Bank”). In response, Plaintiff filed an answer, which included affirmative defenses and counterclaims. Several months later, the Superior Court of New Jersey, General Equity Division, granted summary judgment to the Bank and struck Plaintiff’s answer and defenses and dismissed his counterclaims. This procedural device is a feature of New Jersey foreclosure law, which requires the foreclosing entity first to make a summary judgment motion to strike a defendant’s answer, thereby transforming the contested matter into an uncontested one, and then send the resultant uncontested matter to the Office of Foreclosure in Trenton for entry of a final judgment of foreclosure.

Following entry of summary judgment striking his answer, Plaintiff filed an action in the District of New Jersey alleging, among other things, that the mortgage loan was “invalid” and violations of the federal Real Estate Settlement Procedures Act (RESPA), Home Ownership Equity Protection Act (HOEPA) and the Racketeering Influenced and Corrupt Organizations Act (RICO). The Bank moved to dismiss, relying primarily on the *Rooker-Feldman* Doctrine. That doctrine states that a federal district court does not have jurisdiction to attack collaterally state court judgments. Thus, a litigant unhappy with a judgment of a state court cannot ask a federal court to review and reject the earlier state court judgment.

The federal court in this case, acting *sua sponte*, became concerned that the state court summary judgment was not a final judgment and, therefore, *Rooker-Feldman* was inapplicable because it applied only after the entry of a final judgment. After supplemental submissions, the court held that a New Jersey state court's entry of summary judgment **making a foreclosure matter uncontested was not a final judgment for purposes of *Rooker-Feldman***. The court reasoned that the state court's summary judgment, although striking a plaintiff's pleading and leaving him without any litigation-related recourse, was not a final judgment because a borrower still has multiple opportunities pursuant to New Jersey law to cure his default, salvage his property and thereby prevent the entry of a final judgment that would extinguish any such rights. The court also rejected the Bank's argument that *Rooker-Feldman* applied to interlocutory orders based on *Port Auth. Police Benev. Ass'n, Inc. v. Port Auth. of New York & New Jersey Police Dep't*, 973 F.2d 169 (3d Cir. 1992). The court held that *Port Authority* was inapplicable because that case only dealt with *whether* an order was final for purposes of *Rooker-Feldman*, not whether that doctrine applied only to final judgments.

In sum, lenders foreclosing on property in New Jersey courts should be aware that entry of summary judgment in their favor striking a borrower's answer is not a final judgment for purposes of applying *Rooker-Feldman* or, conversely, for appellate purposes, i.e., **a borrower cannot appeal from an order entering summary judgment against him**. Accordingly, lenders faced with a federal lawsuit in the midst of a foreclosure action should seek dismissal, if warranted, upon alternative grounds.